IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.11.2007

CORAM

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

CRP.NPD.No.827 OF 2004 & CMP.No.10071/2006

1.M.K.Srinivasan
2.Kannan .. Petitioners/Petitioners

Vs

Rangarajan .. Respondent/Respondent

Petition filed under Article 227 of the constitution of India against the endorsement made in Memo in S.O.P.No.114 of 2002 on the file of the learned Principal District Judge, Chengalpattu dated 31.12.2003.

For Petitioners:Mr.V.Lakshmi Narayanan, Counsel

For Respondent Mr.Rangarajan: No appearance

ORDER

The Civil Revision Petitioners are the legal representatives of the deceased S.Selvaranga Battachariar who wrote a last Will and Testament dated 27.04.1993 in the presence of witnesses. The said testator, Late.S.Selvaranga Battachariar did not appoint any executor of his Will. The revision petitioners herein have filed S.O.P.No.114 of 2002 on the file of the learned Principal Judge, Chengelpattu praying permission to prove the said Will in common form and with Letters of Administration to the properties and credits of the said deceased to have effect throughout the State of Tamil Nadu may be granted to them.

2.Before the learned District Judge, Chengalpattu, a Memo was filed by the learned counsel for the revision petitioners/plaintiffs stating that since the testamentary succession falls within the ambit of original side jurisdiction, viz., Sub Court, it was requested by both sides to treat the main Original Petition as suit and transmit the same to Sub Court, Chengalpattu. Besides, the pecuniary jurisdiction of the case works out to Rs.34,000/- triable by Sub Court and that this Court has ordered for transmission of the petition to the file of the learned District Munsif-cum-Judicial Magistrate, Thirukkazhukundram, which has no jurisdiction to try the testamentary succession, as per section 2[bb] of the Indian

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Succession Act and prayed for passing necessary orders to call for the original petition from the file of the learned District Munsif-cum-Judicial Magistrate, Thirukkazhukundram and to transmit the same to Principal Sub Court, Chengalpattu in the interest of justice.

3.The matter was called in open court on 18.02.2003 and it was heard and posted for orders on 31.12.2003 by the learned Principal District Judge, Chengalpattu. The learned Principal District Judge, Chengalpattu, passed an order on the Memo filed by the petitioners dated 10.10.2003 observing that 'the total value of the security after deducting the funeral expenses and medical expenses is Rs.28,800/- which could be the value of the suit in the event of the transfer from the file of the District Court, testamentary jurisdiction to the file of the original jurisdiction as contentious suit and in that circumstances, the value of the suit has to be considered as Rs.28,800/- which would consequently attract the jurisdiction of the District Munsif Court, Thirukkazhukundram and therefore, the suit has to be numbered on the file of the District Munsif Court, Thirukkazhukundram and hence, the transfer effected by this Court stands good and retransfer of the suit cannot be ordered'.

4.Aggrieved against the orders passed by the learned Principal District Judge, Chengalpattu, on the Memo dated 10.10.2003 filed by the revision petitioners/petitioners, the present Civil Revision Petition has been filed before this Court.

5.Learned counsel for the revision petitioners submits that the order passed by the learned Principal District Judge, Chengalpattu, on the Memo dated 10.10.2003 is manifestly erroneous and opposed to law and that the court below has over looked the fact that the Munsif Court has no jurisdiction to try contentious matter arising out of Indian Succession Act. He also further contended that section 266 of the Indian Succession Act is a bar for conducting the proceeding before any Court other than the District Munsif or its delegate and that the Civil Courts Act has no application to the present case, as the proceeding under Indian Succession Act is a special procedure and that the general law has no application and therefore, prayed for allowing the revision by setting aside the order dated 30.12.2003 passed on the Memo filed.

6.Section 2[bb] of the Indian Succession Act defines the terms 'District Judge' means a Judge of a Principal Civil Court of original jurisdiction.

7.Learned counsel for the revision petitioners contends that in regard to the grant of Probate and Letters of Administration, the jurisdiction of Subordinate Courts have been clearly spelt out in the Full Bench decision of this Court reported in 1962 [2] MLJ 18 between R.RAMA SUBBARAYALU REDDIAR VS. RENGAMMAL, wherein

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at pages 321 to 323, it is observed as follows:

> "The Indian Succession Act, 1925, is a consolidating stature which repealed and re-enacted several statutes which dealt with succession to and protection of the property of a deceased person. Certain parts of it relate to particular class of citizens or to disposition of properties situate in the formers Presidency Towns. It is unnecessary to examine them now. Chapter VI of Part IX of the Act relates to the practice and procedure in the matter of granting and revoking probate of a will or Letters of administration to the estate of a deceased person. Section 264 confers jurisdiction on the District Judge to grant or revoke probate or letters of administration. Section 265 lays down that the High Court may appoint such judicial officers within any district as it thinks fit to act for the District Judge as delegates to grant probate and letters of administration in non-contentious matters. A District Delegate's powers in that regard is however circumscribed. The distinction between the powers of a District Judge and District Delegate is that while the former, can grant probate or letters of administration where the deceased at the time of his death had fixed abode or where any property movable or immovable is alone situate within his jurisdiction, the District Delegate can grant them only in the former class of cases [vide sections 270 and 273 of the Act]. The District Delegate can only dispose of non-contentious cases: once a contest arises he will have to transfer the case to the District Judge. An application for revocation of a grant originally made in a non-contentious proceeding cannot even be decided by him [Vide Section 286] as the very filing of the application for revocation will raise a contest. A District Delegate can also refer a non-contentious matter for disposal by the District Judge. There is also a difference in regard to the conclusiveness of a grant made by the District Delegate and the District Judge. The limited jurisdiction granted to District Delegate is not a peculiar feature of the Succession Act of 1925. It existed in the earlier Succession Act of 1865 and the Probate and Administration Act of 1881. Under those enactments [as well as under the present Act] all contentious proceedings, and all those proceedings in which the deceased at the time of his death did not have permanent abode within the

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jurisdiction of the District Delegate whether contentious or not had to be disposed of by the District Judge. Accumulation of work in the District Court became inevitable. The Bengal, Agra and Assam Civil Courts Act, 1887, made a provision by section 23 therein enabling the High Court by a general or special order to authorize any subordinate Judge or Munsif to take cognizance or any District Judge to transfer to a Subordinate Judge or Munsif under his administrative control any contentious proceeding under the Indian Succession Act, 1865 and Probate and Administration Act, 1881. There was a similar legislative provision in the Punjab Civil Courts Act, 1918, the Central Provinces Courts Act, 1917 and the Bombay Civil courts Act, 1869, the respective statutory provisions being sections 30,19 and 28-A. No such provision was made originally in the Madras Civil Courts Act, 1873. Sub-clause [1] to that section, which alone is relevant to the subject under consideration, states:

> 'The High Court may be general or special order authorize any Subordinate Judge to take cognizance of, or any District Judge to transfer to any Subordinate Judge under his control any proceeding under the Indian Succession Act, 1925, which cannot be disposed of by the District Delegates.'

The terms of the section are clear. It authorizes a disposal by the Subordinate Judge of any proceeding under the Indian Succession Act, 1925, other than those that could be disposed of by the District Delegate. The clause relating to transfer also emphasizes the fact that a Sub-Judge duly authorized can dispose of all proceedings that could be disposed of by the District Judge himself. The words "cognizance of" will imply a right to deal with the matter legally and judicially and will also include a power to entertain such proceedings. Therefore the jurisdiction of a Sub Judge invested with a power under section 29[1] of the Madras Civil Courts Act is that of a District Judge and not that of District Delegate under Succession Act. This view is also borne out by sub-clause [3] to that section which provides a right of appeal from the decision of a Subordinate Judge authorized under clause [1] as if he is a District Judge. Thus a notification under the

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above section confers a new jurisdiction on a Sub-Judge to decide all matters, under the Succession Act which cannot be disposed of by a District Delegate.

Much of the argument before us proceeded on the assumption, an assumption for which there is no warrant, that the notification under section 29[1] of the Madras Civil Courts Act confers a jurisdiction on a District Delegate, [Sub-Judge] to dispose of mattes which he would have no jurisdiction to do directly under the provisions of the Indian Succession Act, 1925. A district Delegate appointed under section 265 owes his authority to that source; but a Sub-Judge who is invested with jurisdiction under a notification under section 29[1] of the Madras Civil Courts Act has a different jurisdiction. Thus there is a distinction between the two authorities. For one thing a notification under section n265 can authorize any judicial officer not necessarily a Sub-Judge, to perform the duties given under the statute to District alone can deal with the matters specified therein. It will also be noticed that the notification made by this Court itself makes the distinction; it consists of two parts [1]empowering Sub-Judges under section 265 of the Succession Act so as to enable them to try non-contentious cases; [2] empowering Sub-Judges under section 29[1] of the Madras Civil Courts Act to take cognizance of all proceedings which they could not do qua District Delegates. The latter jurisdiction therefore, cannot be the same as that of a District Delegate.

Mr.V.Ramaswami appearing for the appellant in an able argument contended that what section 29 of the Civil Courts Act intended in effect to achieve was to confer a power on District Delegates which section 286 of the Indian Succession Act expressly prohibited them from exercising. Learned counsel further submitted that if the Legislature did really intend to confer an unrestricted jurisdiction on the Subordinate Judges they could have simply amended in an appropriate manner the Indian Succession Act and that a harmonious construction of the two statutory provisions would require that the Sub-Judge authorized under section 29[1] of the Madras Civil Courts Act could do nothing more than what a District Delegate could. This contention, if accepted, would make section 29[1]

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of the Civil Courts Act a dead letter and would perpetuate the very mischief which was attempted to be remedied; it is also against the plain terms of the section.

In a recent case S.A.No.179 of 1959 my learned brother Veeraswami, J. had to consider the precise question and in the Course of his Judgment observed:-

> 'As I said, in view of the provisions of sections 265 and 286 of the Indian Succession Act, there can be no doubt that a District Delegate is not competent to deal with a contentious testamentary matter. But the power of the Subordinate Judge of Tuticorin to deal with such a matter is not rested upon the provision in Part IX of the Indian Succession Act, but on the power delegated to him by the notification of the High Court under section 29[1] of the Madras Civil Courts Act.'

If I may say so with respect this is an accurate statement of the position. The question is not whether the Legislature could have better achieved its object by making suitable amendment to the Indian Succession Act but rather whether they have done so by introducing section 29 in the Madras Civil Courts Act, which is also a Central enactment. It must be noticed that there was legislation in most of the other Provinces or States conferring jurisdiction on Sub-Judges, etc., if they were to be invested with the necessary powers by the High Court to try contentious cases. The cause and necessity for legislation was therefore peculiar to the Madras Province, where there was need to confer jurisdiction on courts other than those of District Judge, similar to those existing in other States. Evidently, it was thought sufficient, if the Madras Civil Courts Act were alone amended. Nor are we able to accept the argument, that there is any inconsistency between section 265 of the Indian Succession Act and section 29 of the Madras Civil Courts Act and that both of them cannot stand together unless they are interpreted in the way contended for. The two provisions deal with distinct matters, the former with those entrusted to District Delegates and the latter to all the other

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matters."

8.Learned counsel also cited the decision in 1980 T.N.L.J. page 471 between ANNAMMAL AND OTHERS VS. SANTAGU AND OTHERS, wherein it is held in pages 473 to 475 as follows:

"Under Section 264 of the Indian Succession Act, jurisdiction is conferred on the District Judge to grant or revoke probate or letters of administration. The expression "District Judge" is defined by section 2[bb] as meaning the Judge of a Principal Civil Court of original jurisdiction. Provision is made under section 265 of the Act for the appointment of judicial officers within the district as the High Court may think fit to act for the District Judge as Delegates in non-contentious matters relating to the grant of probate or letters of administration. However, it is necessary to bear in mind that the powers of the District Delegate are circumscribed and while the District Delegate can grant probate or letters of administration when the deceased at the time of his death had fixed abode, the District Judge can grant the probate or letters of administration where the deceased had a fixed abode or where any property movable or immovable is alone situate within his jurisdiction. The District Delegate is empowered only to dispose of non-contentious cases and if once a contest is raised, the matter has got to be referred to the District Judge. An application for revocation of a grant made in a non-contentious proceeding cannot be decided by the District Delegate as the very filing of an application for revocation would raise a contest. The non-contentious matter can also be referred by a District Delegate to the District Judge. In addition, even on the question of conclusiveness of a grant made by the District Delegate and a District Judge, there is a difference. It is not as if the limited jurisdiction conferred on the District Delegate was something very peculiar to the is only. But even in the earlier enactments, the difference in the scope of the jurisdiction of the Delegate and the District Judge had been maintained. As a consequence of this, there was a large-scale accumulation of work in the District Court which led to the passing of the legislation in several States with a view to enable the High Court to authorize any Subordinate Judge or even Munsif to take cognizance of or any District Judge to transfer to a Subordinate Judge or Munsif any contentious

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proceeding under the Indian Succession Act, 1865 and the Probate and Administration Act, 1881. In so far as Tamil Nadu is concerned., originally, the Tamil Nadu Civil Courts Act, 1873 was passed and no provision for any transfer as such had been made therein. This was noticed later which led to the passing of the Act XIV of 1926 which introduced Section 29 of the Tamil nadu Civil Courts Act, 1873. Sub-section [2] provided that the District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge, and any either himself dispose of them or transfer them to a Court under his control competent to dispose of them. Under sub-section [3] it was provided that notwithstanding anything contained in section n13, proceedings taken cognizance of by, or transferred to a Subordinate Judge under the provisions of this section shall be disposed of by him subject to the law applicable to like proceedings when disposed of by the District Judge. It is necessary to refer to two Notifications which conferred jurisdiction on Sub Courts to deal with matters for the grant of probate of a will. Under the terms of the Notifications made by this Court under section 265 of the Indian Succession Act, all Subordinate Judges in Madras Province have been appointed ex-officio District Delegates under that enactment within the local limits of the respective jurisdiction. By another Notification under section n29 [1] of the Tamil Nadu Civil courts Act referred to above, all Subordinate Judges in Madras Province have been authorized to take cognizance of any proceedings under the Indian Succession Act, 1925 which cannot be disposed of by the District Delegates [vide Civil Rules of Practice, Volume I, p.275]. It is at once obvious that the power of transfer of a District Judge in matters arising under the provisions of the Indian Succession Act is referable to section 29[1] and by virtue of the second Notification referred to above, the Subordinate Judge is invested with the jurisdiction to try a proceeding of the nature now under consideration. The question that arises now is, whether the Sub Court, exercising the jurisdiction in a matter under the provisions of the Indian Succession Act transferred to it is acting as a court subordinate to the District Court or whether it is a court of concurrent jurisdiction with the District Court so that any order passed by it

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would be appealable to this Court under section 299 of the Indian Succession Act. It is true that under Section 264, jurisdiction is conferred on District Judge to grant or revoke probate or letters of administration. But by the combined effect of Section 29[1] of the Tamil Nadu Civil Courts Act and the second Notification referred to above, the investiture of jurisdiction on Sub-courts in such matters is not to take away the jurisdiction conferred on the District Judge, with the result that both the District Judge as well as the Subordinate Judge will have concurrent jurisdiction for trying matters arising within the jurisdiction of the District Judge. The circumstance that proceedings for the grant of probate have been taken in the Sub Court is only in conformity with the provisions of the Code of Civil Procedure that the proceedings should be initiated only in the Court of a lower grade competent to try. If the jurisdiction is exercised by a Sub Court in a proceeding received on transfer from the District Court pursuant to Section 29[1] of the Act and the Notification, then the Sub Court is really exercising the jurisdiction of the District Judge. This position is well established by the Full Bench decision in 1962 II MLJ p.318. It is therefore, obvious from the aforesaid Full Bench that the jurisdiction of the District Court as well as of the Sub court is concurrent in a matter like this and the effect of the order passed by the Subordinate Judge is the same as that passed by the District Judge exercising his functions under the provisions of Indian Succession Act. It is also significant to note that there is no provision in the Indian Succession Act which makes available a remedy by way of an appeal as against an adjudication made by a Sub Court in a proceeding under the Act received on transfer from the District Court. The provisions contained in Section 388 of the Indian Succession Act cannot be applied to a case like the present as the provisions therein are confined to matters under Part X of the Act relating to succession certificates and would not apply to Chapter IV, wherein provision has been made for granting probates under section 264 and an appeal has also been provided for under section 299 of the Indian Succession Act."

9.It is the contention of the revision petitioners that District Munsif Court cannot be treated as Principal Court of

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original jurisdiction and Act 28 of 1995 did not amend section 29 of the Tamil Nadu Civil Courts Act in regard to the exercise of powers by Subordinate Judge of jurisdiction of District in certain proceedings. Section 266 of the Indian Succession Act invests the District Judge as a Probate Court with all the powers of ordinary civil court which he has in relation to any suit or proceedings pending in his court. The proceedings for the grant or revocation of probate or letters of administration have been held to attract the procedure of the Civil Procedure Code. Section 278 of the Indian Succession Act, 1925 speaks of the petition for letters of administration. As per section 265 of the Indian Succession Act, 1925, the High Court is authorized to appoint delegates for granting probates and letters of administration in non-contentious cases within certain limits and the appointments must be made from judicial officers within particular District concerned. If the Subordinate Judge and the District Delegate are one and the same person, he can have jurisdiction to dispose of contentious proceedings if such proceedings have been transferred to him in his capacity as Subordinate Judge by order of the District Judge or when a Government Notification under the relevant Act, for example, under section 29[1] of the Madras Civil Courts Act, 1873, has empowered Sub Judge to take cognizance and dispose of contentious proceedings. The Sub Judge under the new jurisdiction so created, can dispose of the contentious proceedings and this new jurisdiction is not tantamount to taking away the jurisdiction of the District Judge over contentious proceedings.

10.In AIR 1967 GUJARAT PAGE 214 between BAI ZABU KHIMA VS. AMARDAS BALAKDAS, it is observed as follows:

> "Succession Act [1925], Senior Superintendent.265 and 288 – Effect of sections read together is that a Civil Judge, senior division who is a District Delegate cannot grant letters of administration in contentious applications – Saurashtra District and Subordinate Civil Courts Ordinance [1948], S.28-A[1] – High Court's Notification dated 30.07.1948 – Ordinance empowers High Court to invest powers of a District Judge on any Civil Judge – Notification by the High Court conferring all the powers of a District Judge on all Civil Judges of Senior Division – The Civil Judge can, therefore, entertain a contention – such power has not been affected by the Bombay Civil Courts Act, 1869 – [Bombay Civil Courts Act [14 of 1869], S.28-A] – Bombay Civil Courts [Extension and Amendment] Act [94 of 1958], S.8 proviso – Effect of, is to continue High Court's Notification as if issued under S.28-A, Bombay Civil Courts Act notwithstanding repeal of ordinances."

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11.It is pertinent to point out that Section 388 of the Indian Succession Act, 1925 deals with the investiture of an of an inferior Court with the jurisdiction of the District Court for the purposes of this Act and the appealability of the orders orders of such inferior Courts to the District Judge. In AIR 1949 MADRAS 818 between G.RANGARAJA RAO VS. A.THULASIBAI AMMAL, it is held as follows:

> "The proper way of construing S.29[1], Madras Civil Courts Act and S.388, Succession Act is to say that the general words of S.29[]1, Madras Civil Courts Act, should be limited to proceedings under the Succession Act other than Part X for which the special provision in S.388 of the Act alone will apply. If the general words of S.29[1], Madras Civil Courts Act are interpreted as including also proceedings under Part X, Succession Act, it might result in an inconsistency and possibly in a conflict of powers between the High Court and the Provincial Government. The two sections have got to be read together and reconciled in such a manner that they do not lead to conflict of powers or jurisdiction: AIR [19] Mad.456, Disting. [para 6].
>
> Where apart from the notification of 1939 made in exercise of the powers under S.29[1], Madras Civil Courts Act, there has been no special notification empowering the Subordinate Judge's Court of Cuddalore under either the old S.26, Succession Certificate Act, or the new S.388, Succession Act, the Subordinate Judge's Court of Cuddalore has no jurisdiction at all to entertain an application for succession certificate and this is not a matter which can be cured by S.21, Civil p.c. A notification by the High Court under S.29, Madras Civil Courts Act alone would not vest jurisdiction in a Subordinate Judge to issue a succession certificate under Part X, Succession Act."

12.In AIR 1972 MADRAS 338 between VELLAIAMMAL VS. VELLAICHAMY, it is observed that:

> "So far as an appeal which was preferred to District Judge from an inferior Court was concerned, there was no provision for transfer of an appeal. There was also no provision in the Act which empowered Subordinate Judge to hear appeal. Though High Court had powers under Section 29, Madras Civil Courts Act, 1873 to

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authorise any District Judge to transfer to any Subordinate Judge under his control any proceeding under Succession Act, it had not so empowered and therefore, Subordinate Judge had no jurisdiction to hear appeal."

13.It is useful to refer section 29 of the Tamil Nadu Civil Courts Act, 1873 which runs as follows:

> "29.EXERCISE BY SUBORDINATE JUDGE OF JURISDICTION OF DISTRICT IN CERTAIN PROCEEDINGS:-
>
> [1]The High Court may, by general or special order, authorize any Subordinate Judge to take cognizance of, or any District Judge to transfer to any Subordinate Judge under his control, any proceedings under the Indian Succession Act, 1925 [Central Act XXXIX of 1925], which cannot be disposed of by District Magistrates.
>
> [2]The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge, and may either himself dispose of them or transfer them to a Court under his control competent to dispose of them.
>
> [3]Notwithstanding anything contained in Section 13, proceedings taken cognizance of by, or transferred to, a Subordinate Judge under the provisions of this section shall be disposed of him subject to the law applicable to like proceedings when disposed of by the District Judge."

14.The vesting of authority in a Subordinate Judge to entertain and dispose of contentious applications for Probate etc., under section 29[1] of the Tamil Nadu Civil Courts Act take away the jurisdiction of the District Judge over such matters ad the resultant effect is that both the Subordinate Judge and the District Judge will have concurrent jurisdiction to take cognizance of contentious applications for probate etc., relating to matters arising within the jurisdiction of the former. As a matter of fact, Section 15 of the Code of Civil Procedure **oust** the District Court of its jurisdiction.

15.In HIRALAL VS. KHUSHALI RAM [15 CPLR 54], it is held that "a Civil Judge is not inferior to a District Judge and cannot be invested with the functions of a District Court under this Section." In ANANTHAMATHI VS. RATNAVATHI [AIR 1977 KARNATAKA 201], it is held that "the Munsifs Court in South Kanara District has jurisdiction to grant the succession certificate."

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16.In AIR 1977 ORISSA 88 between INDRAMANI VS. HEMA DIVYA, it is observed that "an order granting succession certificate can be challenged by a regular suit without filing an appeal under 384 of the Indian Succession Act". In AIR 1998 MP 114 between SAVITRI DEVI VS. MANORAMA, it is held that "the choice of either filing an appeal against grant of certificate or filing a suit challenging the certificate is with the party."

17.According to learned counsel for the revision petitioners, section 29 of the Tamil Nadu Civil Courts Act in regard to 'exercise by Subordinate Judge of jurisdiction of District Judge in certain proceedings', no way contemplates District Munsif Court and as per section 29 of the Tamil Nadu Civil Courts Act only the District Judge and the Subordinate Judge are visualized.

18.The G.O.M.S.No.563 dated 28.11.1995 issued by the Government of Tamil Nadu deals refers to the conferment of power in dealing with application for succession certificates under the Indian Succession Act. As per the notification issued by the Government in the aforesaid Government Order, 'all Courts of District Munsifs below Rs.30,000/- and all Courts of Subordinate Judges above Rupees Thirty Thousand' are conferred with the power to exercise the functions of a District Judge under Part X of the said Act within the local limits of their respective jurisdiction in respect of the property, debt, security or any other thing of value specified in the corresponding entry in column [2] thereof. The aforesaid Government Order dated 28.11.1994 issued by the Government supercedes the notification of the Law Department issued with G.O.Ms.No.80 dated 01.04.1982.

19.By virtue of Act 28 of 1995 in the Tamil Nadu Civil Courts Act,1873, an amendment under section 12, in the second paragraph, the words 'fifteen thousand rupees' and 'thirty thousand rupees' were substituted. As per section 4[2] of the Act 28 of 1995, it is envisaged that 'all suits and proceedings of which the amount or value of the subject matter exceeds Rs.15,000/- but does not exceed Rs.30,000/- pending in any Sub Court or District Court, as the case may be, on the date of commencement of this Act, shall stand transferred to the Court of the District Munsif having jurisdiction over the matter'.

20.As per Act 1 of 2004 in the Tamil Nadu Civil Courts Act, 1873,

[1]in section 12:-

[a]For the first paragraph, the following paragraph shall be substituted, namely-

> "The jurisdiction of a District Judge extends, subject to the rules contained n the Code of Civil Procedure, to all original suits and proceedings of a civil nature, of which the

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amount or value of the subject matter exceeds to the rules contained in the Code of Civil Procedure, to all like original suits and proceedings, of which the amount or value of the subject matter exceeds one lakh rupees but does not exceed five lakh rupees.

[b]in the second paragraph, for the expression, 'thirty thousand rupees' the expression 'one lakh rupess' shall be substituted.

21.As per Transitory provision of section 4[2] of the Tamil Nadu Civil Courts Act, all suits pending before an Assistant Judge; an Additional Judge or a Principal Judge or in the High Court or on the date of commencement of the Act and which would be within the cognizance of the Chennai City Civil Court under the provisions of the Chennai City Civil Courts Act, 1872 [Central Act VII of 1892], as amended by this Act, shall stand transferred to the Assistant Judge, Additional Judge or the Principal Judge, having jurisdiction over the subject matter.

22.In High Court circular bearing ROC.No.1849/2002/F1, P.Dis.No.1/2004, the date of commencement of the Act 1 of 2004 was mentioned as 08.01.2004 and further, that consequent to the aforesaid amendment made in the Tamil Nadu Civil Courts Act, 1873 and to the Madras City Civil Courts Act, 1892 and in accordance with the Transitory provisions of the Act 1 of 2004, all the Principal District Judges were directed to take immediate steps to see that:

"[1]All suits pending in a Subordinate Court or District Court on the date of commencement of the Act and which would be within the cognizance of the District Munsif's Court, Subordinate Court or District Court, under the provisions of the Tamil Nadu Civil Courts Act, 1873 [Central Act III of 1873], as amended by the Act, shall stand transferred to the Court having jurisdiction over the subject matter and the Principal Judge, City Civil Court, Madras, was directed to see that all suits pending before an Assistant Judge, an Additional Judge or a Principal Judge or in the High Court on the date of the commencement of this Act, and which would be within the cognizance of the Chennai City Civil Court under the provisions of the Madras City Civil Court Act, 1892 [Central Act VII of 1892], as amended by this Act shall stand transferred to the Assistant Judge, Additional Judge or the Principal Judge, having jurisdiction over the subject matter, without fail, immediately."

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23.The definition 'District Judge' under section 2[bb] of the Indian Succession Act means the Judge of a Principal Civil Court of original jurisdiction. Section 2[4] of the Code of Civil Procedure defines 'District' which means the local limits of the jurisdiction of a Principal Civil Court of original jurisdiction [hereinafter called as District Court], and includes the local limits of ordinary original civil jurisdiction of a High Court. In the goods of Mahendra Narain Roy, the deceased, 5 CWN page 377, it is held that the 'High Court' in Section 87 of the Probate and Administration At [5 of 1881] was not merely confined to the Appellate jurisdiction of that Court, but included its original jurisdiction and that, under that section the High Court exercising its original jurisdiction had concurrent jurisdiction with the District Judge. The expression 'District Judge' in section 295 of the Indian Succession Act as elsewhere in the said Act means and includes a Judge of the High Court sitting on the original side of the High Court exercising testamentary and intestate jurisdiction. In HURAN V. HIGAN-34 ALL 148 [149], it is held that an appeal from an order of a Munsif invested under section 388 with the functions of the District Court lies to the dh only, an the District Judge cannot transfer an appeal for hearing to any Subordinate Court [eg., The Court of the Sub Judge or the Court of a Judge of Small Causes]. Sub-section [1] of Section 384 or the proviso to Sub-section [2] of Section 388 of the Indian Succession Act, does not contain any restriction to these provisions do state that an appeal shall lie to the High Court or the District Judge as the case may be.

24.In 1985 [1] M.L.J. PAGE 16 between MRS.ELIZABETH ANTONY V. M.C.G.C.LOAGMORE, it is held as follows:

> "[A]Tamil Nadu Civil Courts Act [III of 1873], section 29[1] - Notification - jurisdiction of the Subordinate Judge and the District Judge, to entertain proceedings of contentious nature arising under Indian Succession Act for grant of Probate or Letters of Administration - jurisdiction concurrent."

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25.As far as the present case is concerned, the proceeding is one for the proof of the Will and not for an investigation into the matters of complex and disputed interse claims to title to the property dealt with under the Will, in the considered opinion of this Court.

26.It appears that after the amendment of Tamil Nadu Civil Courts Act, 1873 by Act 1 of 2004 wherein the jurisdiction of District Munsif was extended to all like suits and proceedings,

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not otherwise exempted from his cognizance, of which amount, or the value of subject matter does not exceed Rs.1 lakh under Section of the Tamil Nadu Civil Courts Act, 1873, there is no Government order issued conferring powers on al courts of District Munsifs and to Courts of Subordinate Judges to deal with application for succession certificate under the Indian Succession Act, 1925, like the one issued under G.O.Ms.No.563 dated 28.11.1995 which deals with the power of all Courts of District Munsifs and all Courts of District Judges to deal with application for succession certificates. It is significant to refer that section 12 of the Tamil Nadu Civil Courts Act, 1873, speaks of jurisdiction of a District Judge which extends, subject to the Rules contained in the Code of Civil Procedure to all original suits and proceedings of a civil nature of which the amount or value of the subject matter exceeds 'Five lakh rupees' and the jurisdiction of Sub Judge extends, subject to the rules contained in the Code of Civil Procedure, to all like original suits and proceedings of which the amount or the value of the subject matter exceeds one lakh rupees but does not exceed five lakh rupees.

27.No doubt, the G.O.M.S.No.563 dated 28.11.1995 confers power on all Courts of District Munsifs and all Courts of Subordinate Judge to exercise the functions of a District Judge under Part X of the Indian Succession Act, 1925 within the local limits of their respective jurisdiction in respect of property, debt, security or any other thing or value specified therein. It cannot be in dispute that the testamentary jurisdiction is a civil proceeding. As a matter of fact, earlier, the Government of Tamil Nadu has issued G.O.Ms.No.563 dated 28.11.1995 investing the inferior Courts with jurisdiction of District Court for the purpose of Succession Act exercising its powers under Sub-section [1] of Section 388 of the Indian Succession Act, 1925 [Central Act XXXIX of 1925]. Before the learned Principal District Judge, Chengalpattu, a Memo was filed on 10.10.2003 in S.O.P.No.114 of 2002 by the revision petitioners herein as petitioners and it was requested by both sides to treat the main Original Petition as a suit and transmit the same to Sub Court, Chengalpattu on the ground that the pecuniary jurisdiction of the matter works out to Rs.34,000/- triable by the Sub Court and further, it was also mentioned that the District Court which ordered the transmission of the S.O.P.No.114 of 2002 to the file of the learned District Munsif-cum-Judicial Magistrate, Thirukkazhukundram, did not have jurisdiction to try the testamentary succession as per section 2 [bb] of the Indian Succession Act, 1925 and prayed for necessary orders being passed to call for the original petition from the file of the learned District Munsif-cum-Judicial Magistrate, Thirukkazhukundram, and pass orders to transmit the same to Principal Sub Court, Chengalpattu in the interest of justice and the matter was heard on 18.12.2003 and orders were passed on 31.12.2003 inter-alia stating that the value of the suit has to be considered as Rs.28,800/- which would squarely attracted the

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jurisdiction of the learned District Munsif - cum - Judicial Magistrate, Thirukkazhukundram, and therefore, the suit was to be numbered in that Court and therefore, the transfer effected holds good and retransfer of the suit cannot be ordered.

28.It is pertinent to refer that Section 29 of the Tamil Nadu Civil Courts Act, 1873, does not refer to the term 'District Munsif'. In such a situation, this Court is of the considered view that the learned Principal District Judge, Chengalpattu ought to have passed orders on the Memo dated 10.10.2003 in dealing with the said S.O.P.No.114 of 2002 and entertaining the same, since as per section 29 of the Tamil Nadu Civil Courts Act, 1873, he has the concurrent jurisdiction and therefore, to avoid all technical difficulties, this Court directs that the learned Principal District Judge, Chengalpattu should withdraw the S.O.P.No.114 of 2002 from the file of the learned District Munsif-cum-Judicial Magistrate, Thirukkazhukundram, and deal with the said matter himself and to dispose of the same in accordance with law to serve the ends of justice.

29.In the light of the above discussions, the Civil Revision Petition is allowed. However, there shall be no order as to costs. Since the main matter is disposed of, the connected miscellaneous petition in CMP.No.10071 of 2006 is dismissed.

30.Before parting, this Court suggests that the State Government may by notification in the Official Gazette invest the concerned Courts inferior in grade, to a District Judge with power to exercise the functions of a District Judge under Part X of the Indian Succession Act, 1925 as per section 388 of the said Act.

Ap

Sd/
Asst.Registrar
04/12/07

Corrected as per the order of the Hon'ble MVJ

Sd/-
Asst. Registrar.

/true copy/

Sub Asst.Registrar

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To

The Principal District Judge,
Chengalpattu.

• 1 cc to Mr.V.Raghavachari,
Advocate SR.70582

// TO BE SUBSTITUTED TO THE
// ORDER ALREADY DESPATCHED
// ON. 11.12.2007.

NG(CO)
SR/5.12.2007
sg 08/01/08

CRP.NPD.No.827/2004

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